



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

November 19, 2001

Re: STB Finance Docket No. 33407 – Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Release of Final Environmental Impact Statement

Dear Reader:

The Section of Environmental Analysis (SEA) is pleased to provide you with the enclosed Final Environmental Impact Statement (Final EIS) on the proposed Powder River Basin Expansion Project (PRB Expansion Project) of the Dakota, Minnesota & Eastern Railroad (DM&E). The Final EIS was prepared in cooperation with five Federal agencies: the U.S. Department of Agriculture, Forest Service; the U.S. Department of Interior, Bureau of Land Management; the U.S. Army Corps of Engineers; the U.S. Department of Interior, Bureau of Reclamation; and the U.S. Coast Guard.

This Final EIS reflects SEA's independent analysis and incorporates input from agencies, elected officials, Tribes, organizations, businesses, and members of the public. It includes SEA's final recommendations for mitigating as many of the potentially significant adverse environmental impacts associated with the proposed project as possible. These measures, 147 conditions in all, address concerns of the communities through which the DM&E line would operate, as well as issues ranging from grade crossing safety to wayside noise to community and Tribal liaisons. Because of the unique circumstances of the PRB Expansion Project, SEA and the cooperating agencies believe this case warrants more far-reaching and extensive environmental mitigation than is typically imposed by the Board. Therefore, SEA recommends that the Board require DM&E to implement the environmental mitigation measures included in Chapter 12 of this Final EIS as conditions in any final decision approving the project.

In making its final decision on the proposed expansion project, the Board will consider the entire environmental record, including all public comments, the Draft EIS, the Final EIS, and SEA's final recommended environmental mitigation. Congress has not established a statutory

time frame within which the Board's final decision must be issued, and in recognition of the complexity of this controversial proceeding, the Board has not yet announced a date for issuance of its final decision. It will, however, act as promptly as possible, and any party may file an administrative appeal within 20 days of service of its final written decision.

The entire Final EIS has been mailed to key reviewing agencies, Tribes, Governors, elected officials, and appropriate county offices, as well as the parties of record. It is also available to all interested persons for review in the reference section of over 80 public libraries. For information on where to view a copy of the Final EIS, call SEA's toll-free Environmental Hotline at 1-877-404-3044. The entire document is also available on the Board's website (<http://www.stb.dot.gov>), under "Decisions & Notices," and listed as "Environmental Review" by Service Date (November 19, 2001), Docket Number (FD 33407), or Docket Prefix (FD).

SEA appreciates the efforts of all interested parties who reviewed and commented on the Draft EIS. Thank you for your interest and participation in the environmental review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria J. Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria J. Rutson
Environmental Project Director
Section of Environmental Analysis

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33407

Dakota, Minnesota & Eastern Railroad Corporation
Powder River Basin Expansion Project

GUIDE TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT

This Final Environmental Impact Statement (Final EIS) evaluates the potential environmental effects that could result from the Dakota, Minnesota & Eastern Railroad Corporation's (DM&E) proposed Powder River Basin Expansion Project (PRB Expansion Project). The project involves construction of new rail for a total of nearly 300 miles and rehabilitation of approximately 600 miles of DM&E's existing rail line. The Surface Transportation Board's Section of Environmental Analysis (SEA), in cooperation with U.S. Department of Agriculture, Forest Service (USFS); U.S. Department of Interior, Bureau of Land Management (BLM); U.S. Army Corps of Engineers (COE); U.S. Department of Interior, Bureau of Reclamation (Reclamation); and U.S. Coast Guard, has prepared this document in accordance with the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, Council on Environmental Quality (CEQ) regulations implementing NEPA, the Board's environmental rules (49 CFR Part 1105), and other applicable environmental statutes and regulations.

The Final Environmental Impact Statement (Final EIS) includes the following:

- **Executive Summary**—An overview summarizing results of SEA's additional analysis in response to comments on the Draft EIS. It also presents SEA's recommendations on preferred alternatives for the project components and mitigation for the project.

Volume I: Chapters 1-4

- **Chapter 1: Introduction**—An overview of the NEPA and EIS processes for the PRB Expansion Project, as well as a discussion of the decision-making procedures of the lead and cooperating agencies. Information on the organization of this Final EIS.
- **Chapter 2: Purpose and Need**—Information on the need for the proposed project beyond that included in the Draft EIS, including increased demand for electricity and PRB coal, and increased and improved rail infrastructure.
- **Chapter 3: Rail Line Extension**—Additional analysis and recommended conclusions on DM&E's proposed construction and operation of a new rail line extension into the PRB. It addresses rail line Extension Alternatives, Spring Creek Alternatives, Hay Canyon Alternatives, and mine loop alternatives. It also discusses existing conditions in the rail line extension area and potential environmental impacts of alternatives; evaluates additional alternatives raised during the Draft EIS comment period, including the Railroad Rehabilitation and Improvement Financing Program and revisions to Alternative D.

- **Chapter 4: Existing Rail Line, Rail Yards, and Sidings**—Additional analysis related to DM&E's proposed rehabilitation and increased rail operations along its existing rail line. Discusses additional analysis of proposed new rail yards, including existing conditions, potential environmental impacts of alternatives, and SEA's recommendations.

Volume II: Chapters 5-9

- **Chapter 5: Pierre, South Dakota**—Additional analysis and recommended conclusions on the proposed Pierre bypass, including existing environment, additional analysis of potential impacts of the bypass, rehabilitating the existing rail line, and crossing the Missouri River.
- **Chapter 6: Brookings, South Dakota**—Additional analysis and recommended conclusions on the proposed Brookings bypass, including additional analysis of existing conditions and potential impacts of the bypass alignment evaluated in the Draft EIS, discussion of the revised bypass alignment submitted during the Draft EIS comment period, and rehabilitation of the existing rail line.
- **Chapter 7: Mankato, Minnesota**—Additional analysis and recommended conclusions on proposed new connecting track at Mankato, including discussions of existing conditions, alternatives, and potential impacts of each alternative.
- **Chapter 8: Owatonna, Minnesota**—Additional analysis and recommended conclusions related to proposed connecting track between DM&E and I&M Rail Link at Owatonna. It also includes SEA's response to comments on this project component, a summary of information contained in the Draft EIS, and SEA's recommendations for the I&M connection.
- **Chapter 9: Rochester, Minnesota**—Additional analysis and evaluation of the proposed Rochester bypass, including existing conditions of the bypass area and Rochester, as well as additional discussion of potential environmental impacts of the proposed bypass, rehabilitation of the existing rail line, the No-Action Alternative, and SEA's recommended conclusions for this part of the overall project.

Volume III: Chapters 10-12

- **Chapter 10: Cumulative Impacts** – Additional analysis of potential cumulative impacts of the project, including Mississippi River barge traffic, air emissions, grade crossing delay, grade crossing safety, and other system-wide or regional rail related impacts.
- **Chapter 11: Public Outreach** – This Chapter discusses the additional public outreach SEA conducted following release of the Draft EIS.

- **Chapter 12: Recommended Environmental Conditions** – This Chapter presents SEA’s final recommended mitigation measures and discusses modifications to the preliminary mitigation in the Draft EIS. There are both general and local and site-specific mitigation measures. Mitigation measures are recommended for both the construction and operation of the new rail line and DM&E’s existing rail line, with several measures dependent on the level of coal transportation DM&E achieves. Chapter 12 also includes the estimated cost of complying with SEA’s recommended mitigation and the permitting requirements of the cooperating agencies. Finally there is a list of those who prepared the Final EIS and a list of references used in SEA’s additional analysis.

Volume IV: Appendices

- **Appendices** – Technical and support materials SEA used and developed as part of the additional analysis necessary for the Final EIS, including:
 - A: Draft EIS Index**– Includes index for important terms used in the Draft EIS.
 - B: Draft EIS Comments and Responses** – Summary report of comments on the Draft EIS and SEA’s or the cooperating agencies’ responses to these comments.
 - C: Additional Correspondence** – This appendix contains correspondence pertinent to SEA’s analysis in the Final EIS.
 - D: Grade Crossing Mitigation Plan** – This appendix includes a plan developed by DM&E and submitted to SEA as voluntary grade crossing mitigation. SEA is recommending a condition requiring DM&E to comply with the Grade Crossing Mitigation Plan if the Board gives final approval to the PRB Expansion Project.
 - E: Negotiated Agreements** – This appendix includes a list of the Negotiated Agreements submitted to SEA. SEA is recommending a condition requiring DM&E to comply with the Negotiated Agreements if the Board gives final approval to the PRB Expansion Project.
 - F: Memorandum of Agreement** – This appendix contains the Final Memorandum of Agreement involving issues of concern for Tribes for execution by the Board, DM&E and the Tribes.
 - G: Programmatic Agreement** – This appendix includes the Final Programmatic Agreement and Identification Plan involving cultural resources for execution by the Board, Advisory Council, State Historic Preservation Officers, DM&E, and Tribes.

- H: Biological Assessment** – Biological Assessment and the U.S. Fish and Wildlife Service Biological Opinion.
- I: USFS Roads Inventory** – Technical report by the U.S. Forest Service containing and addressing the inventory of roads crossed by the proposed project on the Buffalo Gap and Thunder Basin National Grasslands.
- J: DM&E Rail Siding Plan** – Overview maps of DM&E's existing system and proposed new construction showing, approximately every five miles, milepost locations along DM&E's existing system and proposed new construction alternatives. Also includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative.
- K: Safety** – Technical data supporting additional analysis related to calculation of grade crossing accident frequencies.
- L: Transportation** – Technical data supporting additional analysis related to the calculation of vehicle delay at grade crossings.
- M: Technical Reports** – Technical reports containing and addressing SEA's additional evaluation of the potential environmental issues.
- N: Environmental Justice** – Methodology and technical data supporting additional analysis related to the identification of potential environmental justice communities and determining whether or not they would be disproportionately adversely affected by the proposed project.
- O: Public Outreach Materials** – Information on SEA's additional public outreach since release of the Draft EIS.

* * * * *

FINAL ENVIRONMENTAL IMPACT STATEMENT

POWDER RIVER BASIN EXPANSION PROJECT

November 19, 2001

Abstract

Lead Agency: Surface Transportation Board
1925 K. Street NW
Washington, D.C. 20423-0001
Contact: Victoria J. Rutson, Attorney
Toll Free Environmental Hotline 1-877-404-3044

Cooperating Agencies: **U.S. Department of Agriculture, Forest Service**
Including the **Medicine Bow-Routt National Forest**
Douglas Ranger District and **Thunder Basin National Grassland**
Forest Supervisors's Office - Mary H. Peterson, Forest Supervisor
2468 Jackson Street
Laramie, Wyoming 82070-6535
Contact: Wendy Schmitzer, Project Coordinator (307) 358-4690

and the **Nebraska National Forest**
Fall River Ranger District / W. Half **Buffalo Gap National Grassland**
Forest Supervisors's Office - Don Bright, Forest Supervisor
125 North Main Street
Chadron, Nebraska 69337-2118
Contact: Wendy Schmitzer, Project Coordinator (307) 358-4690

U.S. Department of the Interior, Bureau of Land Management
Newcastle Field Office
1101 Washington Blvd.
Newcastle, Wyoming 82701-2968
Contact: Bill Carson (307) 746-6607

U.S. Army Corps of Engineers, Omaha District
106 South 15th Street
Omaha, Nebraska 68102
Contact: Chandler Peter (307) 772-2300

U.S. Army Corps of Engineers, St. Paul District
190 5th Street East
St. Paul, Minnesota 55101-1638
Contact: Timothy J. Fell (651) 290-5360

U.S. Department of the Interior, Bureau of Reclamation
Dakotas Area Office
P.O. Box 1017
304 E. Broadway
Bismark, North Dakota 58502
Contact: Jeffrey Nettleton, Office Manager (605) 394-9757

U.S. Department of Transportation, Coast Guard
Commander (OBR)
Eighth Coast Guard District
1222 Spruce Street
St. Louis, MO 63103-2832
Contact: Bruce L. McLaren (314) 539-3724

Responsible officials:

1. Surface Transportation Board Members
Surface Transportation Board
2. Rick Cables, Regional Forester, Region 2
U.S.D.A. Forest Service
3. Al Pierson, State Director, Wyoming
U.S.D.I. Bureau of Land Management
4. Lt. Colonel (P)* Kurt F. Ubbelohde
U.S. Army Corps of Engineers, Omaha District
5. Colonel Robert L. Ball
U.S. Army Corps of Engineers, St. Paul District
6. Dennis E. Breitzman, Area Manager
U.S.D.I. Bureau of Reclamation
7. District Commander
Eighth U.S. Coast Guard District

*(P) Pending Promotion

Abstract

This Final Environmental Impact Statement (Final EIS) documents the environmental analysis, including analysis of alternatives, developed to address applications the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) has, or will, submit to the Surface Transportation Board, the U.S.D.A. Forest Service, the U.S.D.I. Bureau of Land Management, the U.S. Army Corps of Engineers, U.S.D.I. Bureau of Reclamation, and the U.S. Coast Guard. The project proposed by DM&E is known as the "Powder River Basin Expansion Project." DM&E's applications are for (1) authority from the Surface Transportation Board to construct and operate new rail line facilities in South Dakota, Wyoming and Minnesota, pursuant to 49 U.S.C. 10901 (Finance Docket No 33407); (2) an easement from the U.S.D.A. Forest Service under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1737, to cross portions of the Thunder Basin National Grasslands in Wyoming and portions of the Buffalo Gap National Grasslands in South Dakota, as proposed for the Powder River Railroad Expansion Project; (3) a U.S.D.I. Bureau of Land Management right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761, to cross public lands administered by the BLM in Wyoming and South Dakota, as proposed for the Powder River Basin Expansion Project; (4) permits from the U.S. Army Corps of Engineers under Sections 10/404 of the Clean Water Act for dredging and filling activities within waters of the United States, and other Corps of Engineers permits required associated with the Powder River Basin Expansion Project; (5) U.S.D.I. Bureau of Reclamation authority for an easement from the United States, pursuant to the Reclamation Act of June 17, 1902 (32 Stat-388), Acts amendatory thereto, and 43 CFR Part 429, to cross Bureau of Reclamation facilities within the Angostura Irrigation District, South Dakota; and (6) authority under the General Bridge Act of 1946, as amended (60 Stat. 847; 33 USC 525 et seq.) and the Department of Transportation Act (Public Law 89-670, 80 Stat. 931-950, 49 USC 1651-1659) from the U.S. Coast Guard for activities related to major modification or replacement of the rail bridge over the Missouri River.

A Draft Environmental Impact Statement (Draft EIS) was issued by the Surface Transportation Board's Section of Environmental Analysis (SEA) in September of 2000 and a Final EIS was issued in November of 2001. SEA invited written comments on the Draft EIS during a 90 day comment period (later expanded an additional 60 days). In addition to inviting written comments, SEA conducted a series of public meetings at locations along the proposed Powder River

Basin Project route which allowed members of the public to present comments in person before representatives from SEA and the cooperating agencies. Several alternatives for the various components of the project were analyzed in detail in the Draft and Final EISs. In the Draft EIS, where appropriate, the agencies identified preferred alternative(s). In other cases, the agencies requested additional public input concerning the analysis presented in the Draft EIS before identifying a preferred alternative or alternatives in this Final EIS. The selection of a preferred alternative in the Draft or Final EIS is not legally binding. The preferred alternative(s) ultimately selected by the agencies may change based on comments received from the public, other agencies, Tribes, and through the lead and cooperating agencies' various deliberative processes.

Members of the public were also invited to comment on related materials included in the Draft EIS. Such materials included the U.S. Forest Service Forest Plans Amendments, the Biological Assessment, the Memorandum of Agreement, the Programmatic Agreement, and the Identification Plan. In addition, DM&E submitted two permit applications under Section 404 of the Clean Water Act to the Army Corp of Engineers. Comments on DM&E's 404 permits were directed to the U.S. Army Corps of Engineers, St. Paul District when pertaining to Minnesota, and U.S. Army Corps of Engineers, Omaha District, when pertaining to South Dakota or Wyoming.

Additional public input was used by SEA to determine resource areas described in the Draft EIS that required further analysis. This Final EIS reflects the results of additional analysis conducted by SEA.

Civil Rights Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age disability, political beliefs and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-5964 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity employer.

Agencies must include a current nondiscrimination statement in new information items, as well as in reprints or revisions to the existing publications and websites. The above statement supersedes any and all previous nondiscrimination statements that USDA has required to be included in its public information materials. Note that the requirement to include the statement does not apply to material that will be published in the Federal Register.

To file a discrimination complaint:

To the Board:	Office of the Secretary Case Control Unit Finance Docket No. 33407 Surface Transportation Board 1925 K Street NW Washington, DC 20423-0001 (202) 565-1592 (voice) or 1-(800) 877-8339 (TDD/TDY)
---------------	--

To the Forest Service:	Secretary of Agriculture U.S. Dept. of Agriculture Washington, DC 20250 (202) 720-7327 (voice) or (202) 720-1127 (TTD)
------------------------	--

To the Bureau of Land Management:	Secretary of the Interior U.S. Department of the Interior 1849 C Street NW Washington, D.C. 20240 (202) 208-3171
-----------------------------------	--

To the Army Corps of Engineers:

U.S. Army Corps of Engineers
GAO Building
441 G Street NW
Washington, DC 20314-1000
(202) 761-0095

To the Bureau of Reclamation:

Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240
(202) 208-3171

To the Coast Guard:

Secretary of Transportation
U.S. Department of Transportation
400 Seventh Street SW
Washington, D.C. 20590
(202) 267-6023

MAJOR RECOMMENDED CONCLUSIONS

The Surface Transportation Board's (Board's) Section of Environmental Analysis (SEA) and its cooperating agencies have conducted an extensive and detailed evaluation of the potential environmental impacts that could result from the proposed Powder River Basin Expansion Project. SEA and the cooperating agencies evaluated the potential impacts of numerous action alternatives, as well as the No-Action Alternative, on human and natural resources, rail safety, transportation, geology, soils, land use, paleontological resources, water resources, wetlands, air quality, noise and vibration, vegetation, wildlife, Federally-listed threatened and endangered species, cultural resources, aesthetics, socioeconomics, and environmental justice. For the reasons discussed in the Final Environmental Impact Statement (Final EIS), based on all the information collected and analysis conducted to date, SEA makes the following recommended conclusions if the Board decides to approve the proposed project:

- With SEA's recommended mitigation for the portion of this project that involves construction and operation of a new rail line from the end of DM&E's existing line in South Dakota west into Wyoming's Powder River Basin, Alternative C combined with the Phiney Flat Alternative, WG Divide Alternative, Black Thunder North Mine Loop, and North Antelope East Mine Loop represents the environmentally preferable alternative.
- The No-Action Alternative (Alternative A) would prevent impacts to a variety of resources but would result in potentially significant impacts of its own, and would not meet the purpose and need for the project.
- The Forest Service, one of the cooperating agencies, has concluded that, had it been acting on its own, it would support the No-Action Alternative. However, the Forest Service has indicated that if the Board should find DM&E's proposal to be in the national interest, it would support Alternative C.
- In its comments on the Draft EIS, the Department of the Interior (which houses two of the cooperating agencies, the Bureau of Land Management and the Bureau of Reclamation) stated that it would support the No-Action Alternative because this alternative avoids substantial and, in some cases, unmitigable adverse environmental impacts associated with all the action alternatives. Since that time, SEA and Interior have been working to resolve the issues and concerns raised in its comments. A revised Departmental position may be developed after Interior has had the opportunity to review the Final EIS and the mitigation measures incorporated therein.
- Rehabilitation of the existing rail line would result in safety improvements to existing rail operations and other impacts, including noise, could be reduced through SEA's recommended mitigation. Therefore, SEA recommends the Action

Alternative (rehabilitation of DM&E's existing line), if the Board determines that the proposed new rail line meets the statutory criteria.

- As for project-related rail yards where there are alternatives, Option B for the Middle East Staging and Marshalling Yard would be environmentally preferable because it avoids the Minneopa State Park near Mankato, Minnesota. For the West Staging and Marshalling Yard, Option B would be environmentally preferable because it avoids impacts to Thunder Basin Natural Grassland.
- Both the Rochester bypass and rehabilitation of DM&E's existing route through the City would have potentially significant impacts, albeit to different resources. However, because of the potential threat of sinkholes associated with the Rochester bypass, and the fact that the mitigation to fill sinkholes would have its own potentially significant effects, SEA cannot recommend the bypass route (Alternative R-4). Accordingly, SEA has developed extensive mitigation for the existing line in Rochester, including two grade separated crossings and noise mitigation. Should the Board approve the PRB Expansion Project, the route through the City of Rochester (Alternative R-2) would be the environmentally preferable route.
- The proposed Pierre, South Dakota bypass would have significant environmental and engineering constraints and is therefore not a reasonable and feasible alternative. Even though nearly all the commenters from Pierre and Fort Pierre indicated that a bypass was necessary, SEA's analysis showed that the proposed bypass would not be workable. Because upgrading DM&E's existing line through Pierre and Fort Pierre would cause significant disruptions, SEA is recommending extensive mitigation, including a grade separated crossing in Pierre, and noise mitigation.
- In addition to the bypass originally proposed by the City of Brookings, South Dakota (Alternative B-4), SEA considered the Railco Bypass Alternative, which was submitted as a comment to the Draft EIS, to respond to the City's claim that the second bypass would minimize potentially significant impacts. SEA determined that both the bypasses would have greater effects on environmental resources than reconstruction of the existing rail line. Because neither bypass is measurably better than the proposed rehabilitation of the existing line, SEA identifies rehabilitation of the existing line, with mitigation, as the preferred alternative for Brookings.

- For Mankato, Minnesota, both Alternatives M-2 (new construction south of Mankato) and M-3 (the existing corridor route involving construction of a new rail line within UP's right-of-way) would have potentially significant environmental impacts, although to different resources. While Alternative M-3 would have fewer significant impacts than M-2, Alternative M-3 could not be built without an agreement between UP and DM&E. Absent such an agreement, Alternative M-2 is the only feasible action alternative in Mankato. Because it cannot be known at this time which Alternative could be constructed, this Final EIS contains mitigation for both Alternative M-2 and M-3.
- For Owatonna, Minnesota, Alternative O-5 (replacing an existing rail diamond switch with a "Y" connection to connect DM&E's rail line with the I&M Rail Link) would be environmentally preferable because it would require minimal upgrading of the existing line. However, Alternative O-5 could not be implemented without an agreement between UP and DM&E. Therefore, SEA recommends Alternative O-4 (construction and operation of a 1.7-mile loop to connect with I&M) in the absence of an agreement between UP & DM&E.
- Rehabilitation of DM&E's existing rail bridge across the Missouri River at Pierre, South Dakota appears to have fewer environmental impacts than building a new bridge.

SEA recognizes that these action alternatives would have potentially significant impacts on a variety of environmental resources, not all of which are fully mitigable. In many cases, DM&E has submitted Negotiated Agreements with communities and other entities to address these environmental impacts and other specific concerns. Where Negotiated Agreements were not reached, SEA identified reasonable and appropriate environmental mitigation to address, to the maximum extent possible, the environmental issues of concern. Because of the unique circumstances of this extremely complex and controversial project, SEA believes that more far-reaching mitigation is warranted here than the Board typically imposes. SEA's environmental mitigation, 147 conditions in all, addresses twelve environmental issue areas and includes local and site-specific mitigation, as well as general mitigation. As discussed in detail in Chapter 12, SEA has estimated the total cost of mitigation (including the measures that would be needed for DM&E to comply with the permitting requirements of the cooperating agencies) could exceed \$140 million, approximately 10 percent of the total estimated cost of construction and rehabilitation associated with the project.

* * * * *

[THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTIVE SUMMARY

[THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTIVE SUMMARY

TABLE OF CONTENTS

ES.1	INTRODUCTION	E-1
ES.2	DIFFERENCES BETWEEN THE DRAFT AND FINAL EIS	E-4
ES.3	PURPOSE AND NEED FOR THE PROPOSED ACTION	E-10
ES.4	DESCRIPTION OF THE PROPOSED ACTION	E-10
ES.5	ALTERNATIVES CONSIDERED IN THIS FINAL EIS	E-12
ES.6	LEAD AND COOPERATING AGENCY DECISIONS	E-15
ES.6.1	The Board	E-16
ES.6.2	U.S. Forest Service	E-17
ES.6.3	U.S. Bureau of Land Management	E-18
ES.6.4	U.S. Army Corps of Engineers	E-19
ES.6.5	U.S. Bureau of Reclamation	E-19
ES.6.6	U.S. Coast Guard	E-20
ES.7	SCOPING, AGENCY COORDINATION AND PUBLIC INVOLVEMENT	E-20
ES.7.1	Public Scoping Process	E-20
ES.7.2	Opportunity for Comment	E-21
ES.7.3	Additional Public Outreach	E-22
ES.8	OVERVIEW OF SEA'S ENVIRONMENTAL ANALYSIS	E-23
ES.9	SUMMARY OF SIGNIFICANT ENVIRONMENTAL IMPACTS	E-24
ES.10	SEA'S RECOMMENDED MITIGATION	E-25
ES.11	DISTRIBUTION AND AVAILABILITY OF THE FINAL EIS	E-26

ATTACHMENTS**TABLES TO THE EXECUTIVE SUMMARY**

<u>Table Number</u>		<u>Page</u>
ES-1	Resources Along New Rail Construction in Wyoming and Western South Dakota Significantly Adversely Impacted By Action Alternatives	E-31
ES-2	Resources Along New Rail Construction in Wyoming and Western South Dakota Significantly Adversely Impacted By Action Alternatives	E-32
ES-3	Resources Along New Rail Construction in Wyoming and Western South Dakota Significantly Adversely Impacted By Action Alternatives	E-33
ES-4	Resources Along New Rail Construction Alternatives in Mankato, Minnesota Significantly Adversely Impacted By Action Alternatives	E-34
ES-5	Resources Along New Rail Construction in Rochester, Minnesota Significantly Adversely Impacted By Action Alternatives	E-35
ES-6	Resources Along New Rail Construction in Brookings, South Dakota Significantly Adversely Impacted By Action Alternatives	E-36
ES-7	Resources Along New Rail Construction in Pierre, South Dakota Significantly Adversely Impacted By Action Alternatives	E-37
ES-8	Summary of Powder River Basin Expansion Project Alternatives Wyoming, South Dakota, and Minnesota	E-38

* * * * *

EXECUTIVE SUMMARY

ES.1 INTRODUCTION

The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA), together with five Federal cooperating agencies (U.S. Department of Agriculture, Forest Service (USFS); the U.S. Department of Interior, Bureau of Land Management (BLM); the U.S. Army Corps of Engineers (COE); the U.S. Department of Interior, Bureau of Reclamation (Reclamation); and the U.S. Coast Guard (Coast Guard)), has prepared this Final Environmental Impact Statement (Final EIS) to analyze and disclose the potential effects of the Powder River Basin Expansion Project (PRB Expansion Project) proposed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) in its February 20, 1998 Application to the Board.¹ SEA has undertaken this environmental analysis in compliance with the National Environmental Policy Act (NEPA) and other relevant environmental laws and regulations.

During the environmental review process, SEA considered a broad range of environmental issues to identify and assess potential environmental impacts and to develop reasonable environmental mitigation measures addressing potential adverse impacts associated with DM&E's proposal. Throughout the environmental review, SEA sought input from agencies, elected officials, Tribes, organizations, businesses, communities, farmers, ranchers, and other members of the public. These entities participated with an unprecedented response sending over 5,000 letters during the public scoping period alone. In developing reasonable environmental mitigation to address adverse environmental impacts that would result directly from the PRB Expansion Project, SEA weighed various perspectives and concerns raised by the public, and the range of environmental impacts and issues. SEA's final environmental mitigation recommendations to the

¹ While this Final EIS for convenience refers only to SEA, the document reflects the input of the five cooperating agencies. The EIS was formulated in light of input from the five cooperating agencies but does not necessarily reflect all their concerns and needs. For example, the COE still needs more detailed information relative to mitigation. The 100+ conditions recommended by SEA to the Board may not "reflect" (meaning mirror or reproduce) the specific needs of the cooperating agencies. However, they were crafted cognizant of those needs.

Board, 147 conditions in all, reflect the variety, complexity, and scope of the environmental issues, and include conditions to address the concerns and responsibilities of the cooperating agencies. Because of the unique circumstances involved in the PRB Expansion Project, SEA believes that this case warrants more far-reaching and extensive environmental mitigation than that typically imposed by the Board.

On September 27, 2000, following public scoping, SEA issued a Draft Environmental Impact Statement (Draft EIS) that identified and evaluated the potential environmental impacts of DM&E's PRB Expansion Project. In the Draft EIS, SEA considered a wide variety of interests and issues. These included communities, home owners, farmers and ranchers, Tribes, and special resources affected by this project (such as the Angostura Irrigation District and two National Grasslands through which the proposed line would pass). SEA also undertook extensive public outreach activities to give interested parties, agencies, Tribes, and the general public the opportunity to learn about the project, define issues, and actively participate in the environmental process. SEA set forth in the Draft EIS its preliminary conclusions regarding the potential environmental effects of the PRB Expansion Project, the various alternatives SEA had considered, and those actions that SEA intended to recommend that the Board require of DM&E to mitigate or alleviate potential significant environmental impacts discovered during the course of the environmental review.

SEA initially provided a 90-day period for public review and comment and later extended the comment period for an additional 60 days (to March 6, 2001). Approximately 8,600 comments on the Draft EIS were received. As demonstrated by the number of comments, the PRB Expansion Project raises important issues for many people with a wide range of interests. SEA appreciates the time and effort of all who have commented, and SEA has done its best to listen to and consider the ideas, comments, and concerns expressed. All the comments were read, coded, and summarized. In some cases, SEA's review indicated that the topic, issue, or concern

had already been adequately and appropriately addressed in the Draft EIS, and no additional action on SEA's part was necessary. In other cases, it was determined that clarification was all that was needed. Other comments clearly indicated a need for further analysis and evaluation. As a result of reviewing these comments, SEA has done additional analysis or reworked some of its analysis using better information and improved procedures. The regulations for implementing NEPA direct agencies to respond to substantive comments on the Draft EIS in the Final EIS (40 CFR 1503.4). A "Draft EIS Comments and Responses" section, Appendix B to this Final EIS, summarizes and responds to the substantive comments received during the comment period.

In addition to accepting written comments on the Draft EIS, SEA hosted 12 joint public meetings to provide another avenue for public comments. These meetings were attended by more than 1,700 persons and approximately 500 speakers presented comments on the Draft EIS. In addition, SEA and the cooperating agencies held a meeting on the Rosebud Indian Reservation, affording Tribal members an opportunity to comment orally. More than 70 Tribal representatives made comments.

Except where otherwise noted, this Final EIS fully adopts and incorporates the Draft EIS. SEA intends that this Final EIS be used in conjunction with the Draft EIS to provide complete documentation of SEA's environmental review process.

Issuance of this Final EIS concludes the Board's environmental review process. SEA has determined that neither a supplement to the Draft EIS nor an additional comment period on this Final EIS is warranted. While the Final EIS presents clarification and additional and modified analysis, SEA has made no substantive "changes in the proposed action," which is the criteria

under the Council on Environmental Quality (CEQ) regulations² for triggering a supplement or additional comment period.

The Board will now issue a final decision, based on the entire environmental record, including the Draft EIS, the Final EIS, and all public and agency comments received, determining whether to give final approval to the project, and if so, appropriate mitigation and its estimated cost. The cooperating agencies will also issue decisions under their own governing statutes, based on the EIS and various applications submitted by DM&E, as discussed below.

DM&E cannot begin construction of its new rail line until the Board issues a final decision approving DM&E's Application and the decision has become effective. Under the CEQ regulations, no decision of the Board or any cooperating agency on DM&E's proposal may be made until 30 days after the Environmental Protection Agency (EPA) publishes a Notice of Availability of the Final EIS.

ES.2 DIFFERENCES BETWEEN THE DRAFT AND FINAL EIS

Between the Draft EIS and the Final EIS, a number of changes have been made based on comments from the general public and other government agencies. However, as noted previously, none of these changes have resulted in substantive changes to the proposed action. The changes include additional consultations and coordination, clarifications and factual corrections, reorganization, documentation of additional data collection to validate assumptions of the Draft EIS and respond to comments, and modifications of existing alternatives.

Specifically, SEA made several additional site visits and consulted with affected communities in South Dakota and Minnesota to investigate and more fully explain in the Final EIS

² 40 CFR 1502.9(c); 1503.1(a)(1-4).

community concerns regarding such issues as noise and vibration increases, emergency vehicle access, air quality impacts and various quality of life issues. Examples of SEA's additional activities include:

- Visited sites and conducted field reconnaissance in Pierre and Brookings, South Dakota and Mankato, Owatonna, and Rochester, Minnesota to assess concerns about the existing line and the proposed bypasses.
- Consulted with the manufacturer of an open-sided MRI machine being considered by the Mayo Clinic to see if the MRI could be operated effectively.
- Consulted with both the manufacturer of the security system used by the Federal Medical Center and PEMSTAR, a manufacturer of vibration-sensitive equipment in Rochester, Minnesota, to address vibration concerns.
- Contacted ski areas that operate in proximity to active rail lines to learn more about the potential effects of the rail line on their operations.
- Contacted numerous communities along other railroad lines over which coal is transported to obtain anecdotal information on whether coal dust has been a significant problem.
- Coordinated with EPA regarding the scope of alternatives, appropriate environmental justice methodologies, wetlands analysis, and general NEPA compliance.
- Coordinated with the U.S. Fish and Wildlife Service to seek ways to minimize potential project-related impacts to threatened and endangered species and wildlife habitat.

- Contacted numerous communities with rail traffic comparable to DM&E's proposed operations to obtain information on the trains' effect on emergency- service response.
- Contacted the Wall Municipal Airport in South Dakota to obtain information on its proposed expansion.
- Consulted with BLM to determine the amount of Federal lands with mineral rights that would be crossed by the proposed Extension Alternatives.
- Consulted with the National Park Service on potential impacts to Class I airsheds.

Clarifications and factual corrections in the Final EIS include:

- Revised analysis of impacts on wetlands potentially affected by the proposed project to resolve discrepancies between information presented in the Draft EIS and DM&E's Section 404 permit applications.
- Refined the length of the Extension Alternatives in proximity to the Cheyenne River in South Dakota.
- Refined environmental justice community analysis, based on a more conservative methodology, as suggested by EPA.

In response to criticism that the organization of the Draft EIS made issues of concern to the reader difficult to find, SEA has organized this Final EIS geographically to make it more reader-friendly. SEA has also placed technical information in the appendices to the Final EIS rather than in the body of the document.

The Final EIS contains updated and more comprehensive information on certain issues, based on, for example:

- Investigation, site visits, and literature review of karst geology along the proposed Rochester bypass and East Staging and Marshalling Yard, to ascertain whether a rail line could be built in these areas of karst topography.
- Additional information regarding the potential of PRB coal to form fugitive dust.
- Recalculation of potential transportation and safety impacts, based on DM&E's proposed Grade Crossing Mitigation Plan, which DM&E submitted after issuance of the Draft EIS.
- In coordination with the Bureau of Reclamation, calculated of potential economic losses to farmers due to construction and operation of one segment of the proposed line.
- Finalizing Programmatic Agreement (PA) addressing cultural resources and distributing the PA for signature.
- Finalizing Memorandum of Agreement on issues of concern to Tribes and distributing it for signature.
- Memorandum of Agreement entered into between the Bureau of Reclamation and DM&E after issuance of the Draft EIS to mitigate project-related impacts on the Angostura Irrigation District in South Dakota.
- Investigation of DM&E's potential use of the Railroad Rehabilitation and Improvement Financing Program to rehabilitate its existing line.

- Revised description of proposed alignment of Alternative M-2 south of Mankato, Minnesota, and its potential environmental impacts, including those to the community of Skyline and the Indian Creek Flood Diversion Project, after DM&E revised its proposed M-2 alignment.
- Extensive literature review of the factors affecting real estate values.
- Additional investigation of DM&E's ability to transport coal by barge on the Mississippi River.

New information incorporated in the Final EIS in response to comments includes:

- Vibration testing in Mankato and Rochester, Minnesota.
- Estimates of cut and fill required for the new Modified D Alternative.
- Estimates of concentrations of hazardous air pollutants emitted by locomotives compared to the levels established by EPA for these pollutants.

In response to comments on the Draft EIS, SEA expanded its discussion of alternatives, examining and gathering additional information on the following:

- Comparison of the B-4 bypass proposed by the City of Brookings, South Dakota to the similar Railco Bypass to determine whether one is measurably better.
- The feasibility of Modified Alternative D proposed by EPA.

- Potential environmental impacts associated with the Pierre, South Dakota bypass.

Moreover, in the Final EIS, SEA has recommended final mitigation measures designed to avoid or reduce environmental impacts if DM&E's proposal is approved by the Board. SEA obtained copies of 51 Negotiated Agreements between DM&E and the affected communities that address the communities' environmental concerns. SEA recommends that the Board impose a condition requiring DM&E to comply with the terms of the Negotiated Agreements if it approves the PRB Expansion Project. For those communities that have not entered into Negotiated Agreements with DM&E, the Final EIS includes site-specific and local mitigation based on site inspections and additional analysis in response to the comments. For example, after visiting Rochester, Minnesota and Pierre, South Dakota — communities that would experience substantial project-related impacts — SEA evaluated possible locations for grade crossing separations. SEA recommends that DM&E be required to install three grade crossing separations, one in Pierre and two in Rochester. Based on its investigation and the comments received, SEA added a mitigation measure to minimize the potential impact of train wayside noise for those noise sensitive receptors that fall within certain noise contours.

The Final EIS's mitigation also contains a condition that would require DM&E to provide or develop alternative access where project-related construction and operation would eliminate access. Based on comments and its own independent investigation, SEA refined its fencing condition to specify a type of wildlife-friendly fencing. SEA revised its condition regarding the Air Quality Working Group. Moreover, SEA has recommended a new condition that would require DM&E to submit quarterly reports documenting its compliance with the environmental mitigation. Finally, as directed by the Board, SEA developed cost estimates for its recommended environmental mitigation and the mitigation likely to be required by the cooperating agencies should this project be approved.

ES.3 PURPOSE AND NEED FOR THE PROPOSED ACTION

On February 20, 1998, DM&E filed its Application with the Board for authority to construct and operate new rail line and associated facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. DM&E stated that the PRB Expansion Project is designed to provide access for a third rail carrier to transport coal eastward from Wyoming's PRB coal mines, and increase the operational efficiency of DM&E's existing rail line in Minnesota and eastern South Dakota. In addition, DM&E stated that its project would increase competitive access to lower-sulphur PRB coal and offer a more reliable regional rail transportation system by increasing rail capacity.

ES.4 DESCRIPTION OF THE PROPOSED ACTION

As stated in the Draft EIS, the PRB Expansion Project is the largest and most challenging construction proposal ever before the Board. It comprises nearly 1,000 miles of rail line — approximately 280 miles of new rail construction and nearly 600 miles of rail line rehabilitation — traverses three states, involves the participation of five cooperating agencies, entails numerous and diverse environmental issues, and involves new rail yards and various alternatives, as well as bypass proposals, the majority of which have their own potentially significant environmental impacts.

Specifically, DM&E's new rail construction would include approximately 262 miles of rail line extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota, and then westerly into Wyoming to connect with the existing coal mines³ located south of Gillette, Wyoming. This portion of the new construction

³ Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle, and Antelope.

would traverse portions of Custer, Fall River, Jackson, and Pennington counties, South Dakota and Campbell, Converse, Niobrara, and Weston counties, Wyoming.

The new rail construction would also include an approximately 13-mile line segment at Mankato, Minnesota, within Blue Earth County. DM&E currently has trackage on both sides of Mankato, accessed by trackage rights⁴ on rail line operated by Union Pacific Railroad Company (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines and avoid operational conflicts with UP.

The final proposed segment of new rail construction would involve a connection between the existing rail system of DM&E and the I&M Rail Link. The connection would involve construction and operation of approximately three miles of new rail line near Owatonna, in Steele County, Minnesota, to allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E also proposes to rebuild and upgrade approximately 597.8 miles of existing rail line, the majority of it (585 miles) being along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. This upgrade would cross Winona, Olmsted, Dodge, Waseca, Brown, Redwood, Lincoln, Lyons, Steele, and Blue Earth counties in Minnesota and Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, and Jackson counties in South Dakota. An additional approximately 13 miles of existing rail line between Oral and Smithwick, in Fall River County, South Dakota, would also be rebuilt. Rail line rehabilitation would include rail and tie replacement, additional sidings, signals, grade crossing improvement, and other systems.

⁴ Trackage rights are arrangements by which one rail carrier allows another to use its railroad track.

Under the Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. 10901, railroads must seek the Board's authority to construct and operate new rail lines, but do not need authority to improve their existing lines. In this case; however, the Board expanded the scope of its NEPA analysis to include improvements on DM&E's existing line proposed by the railroad as part of its construction project. This analysis expansion was in response to one of the cooperating agencies, the COE, which requires such analysis for its NEPA documents.

In addition, four communities submitted bypass proposals as alternatives to mitigate potential impacts associated with the rehabilitation of DM&E's existing line: Rochester and Owatonna, Minnesota, and Pierre and Brookings, South Dakota. The feasibility of each of these bypass proposals was considered in both the Draft and Final EISs.

ES.5 ALTERNATIVES CONSIDERED IN THIS FINAL EIS

The original project as described by DM&E in its February 1998 Application to the Board, included the following components:

- Construction and operation of new rail line extending DM&E's existing system westward, accessing mines in the Powder River Basin (PRB) of Wyoming for the transport of the region's coal resources to coal users located east of the basin (designated in this Final EIS as Alternative B).
- Reconstruction and continued operation of DM&E's existing rail line across South Dakota and Minnesota to standards that would allow DM&E to safely and efficiently transport up to 100 million tons of coal annually in unit coal trains, as well as its existing rail traffic.

- Construction and operation of new rail line connecting two sections of DM&E's existing main line at Mankato, Minnesota, to avoid operating over existing UP rail lines via trackage rights (designated in this Final EIS as the M Alternatives).
- Construction and operation of a new rail line connecting DM&E's existing rail line to the existing I&M Rail Link at Owatonna, Minnesota (designated in this Final EIS as the O Alternatives).

Additional action alternatives developed as a result of the environmental review process included:

- Construction and operation of an alternative route extending DM&E's existing rail system to minimize use of the Cheyenne River corridor, minimize loss of wetlands and impacts to riparian habitats, and to avoid USFS RARE II (Roadless Area Review and Evaluation II) areas in South Dakota and potential endangered species' habitat in Wyoming (designated in this Final EIS as Alternative C).
- Construction and operation of an alternative that would, to the extent possible, utilize existing transportation corridors in the project area, particularly existing rail lines (designated in this Final EIS as Alternative D).
- Construction and operation of a modification to Alternative D, suggested by EPA in comments to the Draft EIS (designated in this Final EIS as Modified Alternative D).
- Construction and operation of alternative routes for the proposed rail line extension in the Spring Creek area of South Dakota to avoid wetlands and riparian habitats along Spring Creek (designated in this Final EIS as the Spring Creek Alternatives).

- Construction and operation of alternative routes for proposed rail line extension in the Hay Canyon area of South Dakota to avoid wetlands and riparian habitats along Hay Canyon and lands irrigated as part of the Angostura Irrigation District (designated in this Final EIS as the Hay Canyon Alternatives).
- Construction and operation of alternative routes for accessing the Black Thunder coal mine in Wyoming (designated in this Final EIS as the Black Thunder North and South Alternatives).
- Construction and operation of alternative routes for accessing the North Antelope coal mine in Wyoming (designated in this Final EIS as the North Antelope East and West Alternatives).
- Construction and operation of a new rail line alternative route that would bypass the existing DM&E rail line through the City of Rochester, Minnesota, as proposed by Rochester (designated in this Final EIS as the R Alternatives).
- Construction and operation of new rail line alternative routes that would bypass the existing DM&E rail line through the town of Brookings, South Dakota, as proposed by Brookings (discussed in this Final EIS as the B-4 Alternative and the Railco Bypass Alternative).
- Construction and operation of a new rail line alternative route that would bypass the existing DM&E rail line through the town of Pierre, South Dakota, as proposed by Pierre (designated in this Final EIS as the P Alternatives).

- Construction and operation of new rail yards, many new rail sidings, and improvements to several existing rail yards.

In the Draft and Final EISs, SEA analyzed each action alternative for the various components of the project to determine whether it was reasonable and feasible and whether it would have potentially significant environmental impacts. Because each project component is independent of the others — that is, selection of one alternative for a particular project component does not foreclose or require selection of a specific alternative for another one — SEA conducted a separate evaluation for each project component.

SEA also considered the No-Action Alternative, (designated in this Final EIS as Alternative A), under which DM&E would not receive final approval from the Board to construct or operate a rail line extension into the PRB, nor would the cooperating agencies issue any permits or easements for this project.

The Final EIS fully incorporates and adopts by reference the analysis contained in the Draft EIS. To avoid unnecessary repetition in this extremely complex case, SEA has not restated its Draft EIS analysis unless modification or clarification was warranted to fully respond to the comments. However, SEA's additional analysis is discussed in detail in the Final EIS. SEA intends that this Final EIS be used in conjunction with the Draft EIS to provide complete documentation of SEA's environmental review process.

ES.6 LEAD AND COOPERATING AGENCY DECISIONS

The Final EIS was prepared by SEA, in cooperation with the USFS, BLM, COE, Reclamation, and Coast Guard. Under the requirements of NEPA, the Board is the lead agency for preparing the Final EIS, and USFS, BLM, COE, Reclamation, and the Coast Guard are cooperating agencies. This Final EIS has been prepared in compliance with NEPA and related

environmental laws, Board regulations for implementing NEPA (49 CFR Part 1105), the guidance provided by the CEQ regulations implementing NEPA (40 CFR Part 1500), as well as USFS, BLM, COE, Reclamation, and Coast Guard policy, procedures, and guidance documents.

The Federal agencies' actions considered in this Final EIS will include decisions by the Board and each of the cooperating agencies. The Federal agencies' decision making authority, and the status of the various applications either submitted or to be submitted by DM&E to these agencies, is presented below.

ES.6.1 The Board

In reviewing rail construction proposals under 49 U.S.C. 10901, the Board determines whether an applicant is financially fit, whether there is a public need for the proposed new service, and whether the project is in the public interest and will not unduly harm existing rail services. The Board can either (1) approve a transaction as proposed, without conditions; (2) approve the transaction with conditions to offset or reduce the potential impacts, including environmental impacts, of the proposed transaction; or (3) disapprove the transaction entirely.⁵

On December 10, 1998, the Board issued a decision finding, based on the record developed at the time, that DM&E's proposal satisfies the transportation aspects of the ICCTA.⁶

⁵ The Board's authority to impose conditions is not limitless. Any conditions imposed, including environmental mitigation, must be directly related to the transaction before the Board for approval, must be reasonable, and must be supported by the record before the Board. The Board does not have authority to require mitigation of pre-existing environmental impacts, such as impacts resulting from existing railroad operations or land development.

⁶ In enacting the Interstate Commerce Commission Termination Act in 1995, Congress intended to facilitate rail line construction. Congress did so by changing the statutory standard from requiring approval, if the agency finds that a project is consistent with the public convenience and necessity, to requiring approval unless the agency finds that the project is inconsistent with the public convenience and necessity. The Board noted (December 10, 1998 decision at 17) that "[u]nder the revised statute, proposed rail constructions are to be given the

(A copy of the Board's decision is attached at Appendix A to the Draft EIS). In making this finding; however, the Board explained that the project could not be finally approved until the environmental review process required under NEPA and related laws is completed and the Board has had the opportunity to assess fully the potential environmental effects and the cost of any environmental mitigation that it might impose on the project. The Board made clear in its December 1998 decision that it would issue another decision on the entire proposed project following the completion of the EIS process and that no new construction may begin until a final decision is issued and has become effective. Following the conclusion of the environmental review process, the cooperating agencies will also issue decisions under their own governing statutes, based on the EIS and various applications submitted by DM&E.

ES.6.2 U.S. Forest Service

On April 28, 1998, DM&E submitted a Special Use Application to the USFS for an easement under the Federal Land Management and Policy Act of 1976, 43 U.S.C. 1737, to construct a new rail line across portions of the Thunder Basin National Grassland (part of the Medicine Bow-Routt National Forest) in Wyoming and the Buffalo Gap National Grassland (part of the Nebraska National Forest) in South Dakota. USFS will decide whether to issue DM&E an easement, and if it is issued, the terms and conditions, including the location, of the easement.

Currently, USFS is preparing a new management plan for the National Grasslands located in the Great Plains. The Final EIS on this new management plan, the Northern Great Plains Plan Revision, is currently out for public comment. The public comment period closes on January 16, 2002, and a Record of Decision is expected later that year. Until USFS issues a

benefit of the doubt.”

Record of Decision on the Northern Great Plains Plan Revision, the existing management plan for each grassland remains in effect.

The National Forest Management Act, (36 CFR Part 219.10(e)) requires consistency between a proposed project and National Forest Land and Resource Management Plans (NFL and RM Plans). USFS has evaluated both the existing Nebraska and Medicine Bow-Routt Forest Plans and the Northern Great Plains Plan Revision for consistency with the standards and guidelines of the NFL and RM Plans.

USFS has identified its Preferred Action Alternative for this project as Alternative C. Neither Alternative C, however, nor any of the other Action Alternatives considered, is consistent with the Forest Plans. Therefore, if the Board approves any Action Alternative, Forest Plan amendments would be necessary (proposed amendments are attached at the end of the Draft EIS Executive Summary).

In addition, USFS is required by 36 CFR 219 to inventory, evaluate, and consider, for RARE II status, all roadless areas within the National Forest System for possible inclusion in the National Wilderness Preservation System. Certain PRB Expansion Project alternatives could affect RARE II areas identified on the Buffalo Gap National Grassland. It is also possible that the Nebraska National Forest Alternative, which is part of the Northern Great Plains Plan Revision, would require Forest Plan amendments, if selected, but the USFS preferred Action Alternative (Alternative C) would avoid these areas.

ES.6.3 U.S. Bureau of Land Management

In April 1998, DM&E submitted its application to cross public lands within Wyoming and South Dakota administered by BLM. Under the Federal Land Management and Policy Act

of 1976, BLM will decide whether to issue a “right-of-way” grant over public lands it administers, and if so, where the right-of-way grant would be.

ES.6.4 U.S. Army Corps of Engineers

DM&E has submitted applications to the St. Paul District and Omaha District of the COE, under Section 404 of the Clean Water Act, for the discharge of dredge or fill material into the waters of the United States, including wetlands associated with its proposal. Additionally, DM&E requires a permit under Section 10 of the Rivers and Harbors Act of 1899 from the St. Paul District for encroachment into the Minnesota River. Comments will be addressed by the COE as part of the Section 10/Section 404 permitting process. State and local wetland requirements will be coordinated with COE as part of the Section 404 permitting process, as well.

ES.6.5 U.S. Bureau of Reclamation

Reclamation operates and administers the Angostura Dam and Reservoir in western South Dakota, and associated irrigation canals and ditches, and works closely with the local irrigation district, Angostura Irrigation District, to obtain repayment of project costs, based on water delivered and acres of irrigated land. The PRB Expansion Project could cross lands, facilities, canals, and laterals under the jurisdiction of Reclamation, depending on which alternative, if any, is approved for construction. In that event, a permit for such crossings would be required from Reclamation prior to construction. Because the WG Divide Alternative (one of the Hay Canyon Alternatives) would impact private lands within the Angostura Irrigation District and associated facilities administered by Reclamation, Reclamation raised concerns that railroad construction and operation under the WG Divide Alternative could result in significant impact to land use, irrigation facilities, and economics within the Angostura Irrigation District. However, Reclamation and DM&E recently entered into a Memorandum of Agreement (MOA) designed to address these concerns. The MOA is attached in the appendices to this Final EIS,

and SEA is recommending that the Board impose a condition requiring DM&E to comply with the MOA if the Board approves the PRB Expansion Project.

ES.6.6 U.S. Coast Guard

The Coast Guard has responsibility and authority to issue bridge permits under Section 9 of the Rivers and Harbors Act of 1899 and the General Bridge Act of 1946. Therefore, before DM&E could rebuild or construct a new bridge over navigable waters, such as the Missouri River bridge crossing at Pierre, South Dakota, it would have to obtain a permit from the Coast Guard.

ES.7 SCOPING, AGENCY COORDINATION AND PUBLIC INVOLVEMENT

Throughout its environmental review process, SEA conducted extensive public outreach activities to inform the public about the PRB Expansion Project and to facilitate public participation. SEA consulted with Federal, state, and local agencies, Tribes, affected communities, landowners, and various private organizations to gather and disseminate information about the proposal.

ES.7.1 Public Scoping Process

The first step of the EIS process is scoping, an open process under NEPA for determining the scope of environmental issues to be addressed and their potential for significance. Scoping gives the public the opportunity to help the agency identify important resources, issues, or concerns that could be affected by the project. Public meetings and submission of written comments by interested agencies, Tribes, and the public are means used to obtain information on the project area. Scoping involves wide-distribution of information and requests for comments. Based on the information obtained, the agency develops a Scope of Study outlining the resources and analyses to be completed as part of preparing the EIS.

Here, the Board published its Notice of Intent to Prepare an EIS and Conduct Scoping Meetings on March 30, 1998. Between April and July 1998, SEA conducted 14 agency and public scoping meetings in all three affected states to solicit public involvement and input into the scoping process. Interested persons and agencies participated in these meetings, reviewed the draft scope of study for the EIS, and provided oral and written comments on the issues to be addressed in the EIS. Information sheets on the project, the draft scope of study, and comment sheets were available at the scoping meetings, along with tape recorders for participants who preferred recording their spoken remarks to submitting written comments.

Comment sheets not collected at the meetings could be mailed directly to the Board after attendees took them to other family members, neighbors, or friends who were unable to attend the meetings. Interested parties were also invited to submit written comments along with or in lieu of prepared comment sheets. Over 1,000 people and representatives of more than 30 Federal, state, and local agencies attended the scoping meetings, and more than 600 comment sheets were returned, along with over 5,000 written comments reflecting a variety of interests of individuals, agencies, Tribes, and communities.

On June 10, 1998, the Board published the draft Scope of Study for the Draft EIS in the *Federal Register* and invited public comment. Based on a complete review of all public comments received during scoping—both oral and written—the Board issued the Final Scope of Study on March 10, 1999. The Final Scope was served on all parties of record, mailed to approximately 2,000 people, and published in the *Federal Register* (Vol. 64, No. 46, p. 11,980).

ES.7.2 Opportunity for Comment

As previously noted, issuance of the Draft EIS on September 27, 2000 began a 90-day period for public review and comment, which was extended an additional 60 days to March 6, 2001. In addition, after the Draft EIS was issued, SEA hosted 12 public meetings throughout the

project area and a meeting on the Rosebud Reservation with the cooperating agencies, affording Tribal members an opportunity to comment orally. Approximately 8,600 written comments were received.

ES.7.3 Additional Public Outreach

In addition to the public notice and involvement required in the EIS process, SEA also conducted further, extensive public outreach programs to identify the public's environmental concerns related to this project. This included meetings and consultations, many site visits, use of the Board's official website, and a toll-free Environmental Hotline. SEA prepared comprehensive mailings that included postcards, press releases, a newsletter and other information containing descriptions of the project and SEA's environmental review process, to facilitate and encourage public understanding and participation.

Throughout the environmental review process, SEA consulted with resource agencies, including the cooperating agencies, communities, and Native American Tribes and organizations, to discuss the project in greater detail, and obtain information on the environmental resources potentially affected and concerns raised in comments on the Draft EIS. Meetings and consultations were held with many individuals and groups, including the following:

- U.S. Forest Service
- U.S. Fish and Wildlife Service
- U.S. Army Corps of Engineers
- Wyoming State Historic Preservation Office
- Minnesota Department of Natural Resources
- Advisory Council on Historic Preservation
- Medicine Wheel Coalition
- Bureau of Indian Affairs
- Black Hills Sioux National Council
- Winona, Minnesota
- Mankato, Minnesota
- Bureau of Reclamation
- Wyoming Game and Fish
- Bureau of Indian Affairs
- Minnesota Historical Society
- Minnesota State Archaeologist Office
- South Dakota Game, Fish & Parks
- South Dakota State Historical Society
- U.S. Coast Guard

- South Dakota and Wyoming Ranchers and Farmers
- Minnesota Farmers
- Mayo Foundation
- University of St. Thomas Gainey Conference Center
- PEMSTAR
- Cheyenne River Sioux Tribe
- Medicine Wheel Alliance
- Grey Eagle Society
- Oglala Sioux Tribe
- Rochester, Minnesota
- Owatonna, Minnesota
- Skyline, Minnesota

ES.8 OVERVIEW OF SEA'S ENVIRONMENTAL ANALYSIS

SEA's in-depth environmental review of DM&E's proposal and the various alternatives (including the No-Action Alternative) included:

- Independent environmental studies associated with the construction of approximately 280 miles of new rail line and the upgrading of 600 miles of existing rail line:⁷ biological surveys for threatened and endangered species; wildlife migration; cultural resource surveys for archaeological sites and historic resources; data compilation and study of potential effects on safety, including grade crossing safety and potential vehicle and emergency vehicle delays; air quality (including visibility); railroad and vehicular traffic volumes; wetlands and aquatic resources; noise; vibration; geological resources and soils; and potential impacts to land use, such as ranches, farms, and communities, including environmental justice communities.

In conducting its environmental analysis, SEA was assisted by several agencies with technical expertise, including the five cooperating agencies, which participated in the preparation of the Draft and Final EIS, including the recommended mitigation.

⁷ Additional studies have been submitted as environmental comments during the environmental review process. These include the Minnesota Department of Transportation; the City of Mankato, Minnesota; the City of Rochester, Minnesota; and the Triple Seven Ranch. SEA has reviewed the information presented in these studies and included it in the Final EIS, as appropriate.

- Independent analysis of potential project impacts related to operational increases in rail traffic: safety, such as grade crossing safety, potential vehicular delays, emergency vehicle response, and construction-related impacts to safety; land use; biological and water resources; geology and soils; air quality; noise; vibration; hazardous materials; transportation systems; socioeconomics; Tribes; cultural and historic resources; environmental justice communities; and cumulative effects.

SEA evaluated potential impacts for three levels, or tiers, of projected rail operation to account for anticipated growth in train traffic as DM&E's proposed system would begin to operate and build its customer base: 20 million tons of coal transported annually (eight coal trains per day); 50 million tons (18 coal trains per day); and 100 million tons (34 coal trains per day).

- Evaluation of concerns raised by government agencies and the public; Tribes; communities; small businesses; farmers; ranchers; and environmental groups. Their concerns included the potential for safety impacts (including emergency vehicle access), noise/vibration increases, property value decreases, air quality impacts, effects on cultural resources and Tribal traditions, environmental justice issues, and broad quality of life issues.

ES.9 SUMMARY OF SIGNIFICANT ENVIRONMENTAL IMPACTS

In the Draft and Final EISs, SEA identified potential significant adverse environmental impacts that would result from the recommended alternatives for the PRB Expansion Project. As explained in detail in the Draft and Final EISs, and summarized in the tables attached at the end of this Executive Summary addressing impacts, SEA identified potential environmental impacts in the areas of highway/rail grade crossing safety, noise, biological resources, geology and soils, land use, cultural resources, paleontological resources, air quality, water resources and wetlands, and

aesthetics. DM&E submitted Negotiated Agreements with affected communities and other entities to address these environmental impacts and other local concerns. Where agreements were not reached, SEA identified reasonable and appropriate environmental mitigation to address each of these issues, to the maximum extent possible, in the event that the PRB Expansion Project is approved.

The PRB Expansion project also would have some environmental benefits. The primary environmental benefit of this project is that DM&E's existing system in Minnesota and the eastern half of South Dakota, which is currently in generally poor condition, would be totally upgraded to allow the operation of unit coal trains, thus enhancing the safety of DM&E's existing rail operations. Some socioeconomic impacts from the proposed project also would be beneficial,⁸ such as increased employment opportunities, increased tax base and revenues, and more spending for local goods and services.

ES.10 SEA'S RECOMMENDED MITIGATION

SEA's recommended mitigation measures are reasonable and feasible measures designed to address as many of the potential significant adverse environmental impacts associated with the PRB Expansion Project as possible, if the PRB Expansion Project receives final approval from the Board. SEA's environmental mitigation, 147 conditions in all, reflects the variety and complexity of the environmental issues. Mitigation measures are recommended for both the construction and operation of the proposed new rail line and DM&E's existing rail line, with some measures dependent upon the level of coal transportation DM&E would achieve. Because of the unique circumstances involved in the PRB Expansion Project, SEA and the cooperating agencies believe this case warrants more far-reaching and extensive environmental mitigation than the mitigation

⁸ Normally, the Board analyzes only those socioeconomic issues shown to be related to changes in the physical environment as a result of the proposed action. Here, in order to satisfy requirements of certain cooperating agencies, the analysis of socioeconomics in this Draft and Final EIS is broader.

typically imposed by the Board. For example, SEA is recommending three grade separated crossings, one in Pierre, South Dakota, and two in Rochester, Minnesota, extensive grade crossing improvements, and wayside noise mitigation for noise sensitive receptors that fall within a specific noise contour in communities that have not entered into Negotiated Agreements with DM&E. SEA also has recommended that DM&E establish a community liaison and a Tribal liaison, and is proposing an oversight period and quarterly reporting documenting the status of mitigation implementation. Chapter 12 includes a complete list of SEA's final recommended mitigation and the estimated cost of complying with SEA's recommended mitigation and the permitting requirements of the cooperating agencies.

For some areas with identified adverse environmental impacts, SEA has determined that mitigation alternatives would not fully address potential environmental concerns. For example, even with mitigation, there would be visual impacts on grasslands and impacts to cultural resources. Based on its independent environmental analysis and review of all the public comments, SEA recommends that the Board require DM&E to implement the environmental mitigation measures included in Chapter 12 of this Final EIS as conditions in any final decision approving the proposed PRB Expansion Project.

ES.11 DISTRIBUTION AND AVAILABILITY OF THE FINAL EIS

Although not as long as the Draft EIS, this Final EIS is still quite lengthy. Therefore, SEA has mailed the entire document only to key reviewing agencies and other entities, Governors, elected officials, and appropriate county offices, as well as the parties of record. To assure that all other interested persons can review the document, SEA has distributed the Final EIS to over 80 public libraries, and asked that the Final EIS be made available in their reference section. To obtain the name of the library nearest you that has the Final EIS, please call the toll-free Environmental Hotline at (877) 404-3044, and leave your name, address and telephone number. Someone will return your call with the location of the library nearest you where you may review

the document. Furthermore, the entire document is available on the Board's website (<http://www.stb.dot.gov>), and can be accessed by clicking on "Decisions & Notices," and selecting any one of the following choices: 1) Service Date (November 19, 2001), 2) Docket Number (FD 33407), or 3) Docket Prefix (FD). The Final EIS will be listed as "Environmental Review" under the "TYPE" category. SEA recognizes that the size of the Draft EIS made it difficult to access that document online. SEA has taken steps to make it quicker and easier to access the Final EIS.

Finally, in accordance with CEQ regulations, SEA has submitted the Final EIS to the U.S. Environmental Protection Agency for formal public notice of availability. The Board also has published its own Notice of Availability in the *Federal Register* and mailed copies to the several thousand people, agencies, Tribes, and organizations on the project mailing list. The Board's Notice of Availability announces the locations where the entire Final EIS is available and gives the Board's website address, along with instructions on how to access the document online.

Issuance of this Final EIS terminates the Board's environmental review process. In accordance with CEQ regulations implementing NEPA, no agency decision on the proposed action may be made until 30 days after EPA publishes its Notice of Availability of the Final EIS. Congress has not established a statutory time frame within which the Board must issue its final decision, and the Board — in recognition of the complexity of this controversial proceeding — has not announced a date for issuance of the final decision. In the interests of bringing this matter to closure, however, the Board will act as promptly as possible.

In its final decision, the Board will address the entire proposed project, assessing the potential environmental effects, and the cost of any environmental mitigation it might impose; and it will impose any conditions it deems appropriate, including environmental conditions. No project-related construction may begin until the Board's final decision has been issued and has

become effective. Parties who wish to file an administrative appeal of the Board's final decision, including any environmental conditions that the Board might impose, may do so within 20 days of the Board's final decision, as provided in the Board's rules. The Board will consider any administrative appeals in a subsequent decision. The appeal processes of the cooperating agencies will be presented in their Records of Decision.

* * * * *